

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE

BILLY GENE FERGUSON v. STATE OF TENNESSEE

**Direct Appeal from the Circuit Court for Coffee County
No. 27,216F John W. Rollins, Judge**

No. M2005-00175-CCA-R3-CD - Filed August 15, 2005

In this case, Appellant, Billy Gene Ferguson, has appealed from the trial court's order summarily dismissing, without an evidentiary hearing, his petition for writ of habeas corpus. The State has filed a motion for the trial court's judgment to be affirmed pursuant to Rule 20 of the Rules of the Tennessee Court of Criminal Appeals. We grant the motion and affirm the judgment of the trial court.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court
Affirmed Pursuant to Rule 20 of the Tennessee Court of Criminal Appeals**

THOMAS T. WOODALL, J., delivered the opinion of the court, in which DAVID H. WELLES and JERRY L. SMITH, JJ., joined.

Billy Gene Ferguson, Winchester, Tennessee, *pro se*.

Paul G. Summers, Attorney General and Reporter; Benjamin A. Ball, Assistant Attorney General; and C. Michael Layne, District Attorney General, for the appellee, the State of Tennessee.

MEMORANDUM OPINION

From the record available, it appears that Appellant pled guilty to five (5) separate felony offenses in Case No. 27,216F in the Circuit Court of Coffee County on October 20, 1995. In the first count, he pled guilty to burglary of a building, a Class D felony, and received a sentence of three (3) years in the county jail, with six (6) months to be served by incarceration, followed by two (2) years and six (6) months of probation. In the second count, he pled guilty to Class D felony theft and received a sentence of three (3) years, with service of six (6) months before being placed on probation, concurrent with Count 1. In the third count, he pled guilty to Class D felony vandalism, and received a sentence identical to those sentences in Counts 1 and 2, also to be served concurrently with the sentences in Counts 1 and 2. The other two convictions were for Class D felony burglary of a building and Class E felony vandalism; he received a sentence of three (3) years for the Class D felony, to be served on probation, and two (2) years for the Class E felony, also to be served on

probation. These last two convictions were to be served concurrently with each other, but consecutively to the sentences being served for Counts 1, 2, and 3. The total effective sentence was six (6) years, with six (6) months to be served by incarceration followed by the remainder of the sentence being served on probation. As stated above, these sentences were imposed on October 20, 1995.

On September 5, 2002, almost seven (7) years later, the trial court of Coffee County entered an order reflecting that he was sentenced to six (6) years on October 20, 1995, and upon a finding of violation of probation, ordered Appellant to serve six (6) years in the Tennessee Department of Correction. There is nothing in the record to indicate that Appellant appealed from the revocation of his probation in 2002, and a search by this Court does not reflect that any appeal was taken.

On October 18, 2004, Petitioner, who was incarcerated in Clifton, Wayne County, Tennessee, filed a petition for writ of habeas corpus in the Circuit Court of Coffee County at Manchester. The factual allegations in this petition for habeas corpus alleged that he should not be serving a revoked sentence on the first three counts involved in his previously entered judgments in 1995, being the initial three-year sentence with all but six months suspended, because that sentence had expired in 1998, well prior to his probation revocation hearing in 2002. In other words, Appellant is arguing that the trial court of Coffee County, at a probation revocation hearing in 2002, could only revoke his second three-year sentence.

The record does not contain the probation violation warrant issued by the Coffee County Circuit Court prior to the revocation hearing. The filing of a probation violation warrant, within the time period of the probation, tolls the running of the probationary period. *State v. Shaffer*, 45 S.W.3d 553, 555 (Tenn. 2001).

If the facts are as alleged by the Appellant, he may or may not be entitled to relief pursuant to this Court's decision in *State v. Anthony*, 109 S.W.3d 377 (Tenn. Crim. App. 2001).

However, the State moved to dismiss the Appellant's petition for habeas corpus, without an evidentiary hearing, because he had not filed the petition in compliance with Tennessee Code Annotated section 29-21-105, which provides in full that "[t]he application should be made to the court or judge most convenient in point of distance to the applicant, unless a sufficient reason be given in the petition for not applying to such court or judge". Clearly, the petition for writ of habeas corpus, under this statute, was required to be filed in the Wayne County Circuit Court, and not in Coffee County. Petitioner does not allege in his petition any reason, much less a "sufficient reason" for not filing the petition in the Wayne County Circuit Court.

For this reason alone, we conclude that Appellant is not entitled to relief on appeal, because the petition was filed in Coffee County, rather than with the court closest to Appellant, pursuant to Tennessee Code Annotated section 29-21-105. The judgment of the trial court summarily dismissing the petition is affirmed.

CONCLUSION

The judgment rendered by the trial court was in a proceeding before the trial judge without a jury, the judgment is not a determination of guilt, and the evidence does not preponderate against the finding of the trial judge. No error of law requiring a reversal of the judgment is apparent on the record. Accordingly, the judgment of the trial court is affirmed pursuant to Rule 20 of the Rules of the Tennessee Court of Criminal Appeals.

THOMAS T. WOODALL, JUDGE